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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,320

08/17/2005

Nathan Charles Brown

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EXAMINER

BROWN, COURTNEY A

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

08/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/518,320	Applicant(s) BROWN ET AL.	
	Examiner COURTNEY BROWN	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/18/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Examiner of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Examiner Courtney A. Brown.

Receipt of Amendments/Remarks filed on April 14, 2008 is acknowledged. Claims 11 and 12 were added. Claims 1-12 are pending and are being examined for patentability.

Rejections and/or objections not reiterated from the previous Office Action are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

Priority

Priority to United Kingdom Foreign Application 0213999.6 filed on June 18, 2002 is acknowledged.

Information Disclosure Statement

The Information Disclosure Statement (IDS) submitted on November 18, 2005 has been considered by the examiner.

Claim Rejections- 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5, 11 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Rieley et al. (US 2002/0119108 A1).

The applied reference has a common Assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Rieley et al. disclose an antiperspirant (AP) composition comprising a non-interacting mixture wherein intimate contact between the AP salt and the polymer is not possible and the polymer is physically separate from the AP salt. . Rieley et al. disclose that the aforementioned mixtures include co-dispersions of the AP salt and the polymer in a non-solvent carrier material and a true solution comprising both AP salt and the

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polymer and mixtures comprising AP salt encapsulated by the polymer ([0017], claim 1 of instant application). Rieley et al. disclose the use of emulsifiers such as dimethicone ([0050], claim 5 of instant application). Additionally, Rieley et al. disclose the use of Brnsted (i.e., Brønsted of instant application) carboxylic acid groups ([0023], claim 11 of instant application) and polymers that have an acid value of greater than 320 ([0026], claim 12 of instant application).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cai et al. (US Patent 6,451,295 B1) in view of Rieley et al. (US 2002/0119108 A1).

Applicant's Invention

Applicant claims a w/o (water/oil) emulsion antiperspirant composition comprising a dissolved antiperspirant salt, an emulsifier and, in a disperse phase separate from the dissolved antiperspirant salt, a polymer comprising Bronsted acid groups.

Determination of the scope and the content of the prior art (MPEP 2141.01)

Cai et al. teach clear antiperspirant and/or deodorant compositions, especially clear sticks having good structural integrity (abstract) that are made as water in oil emulsions or water with glycol and oil emulsions (column 5, lines 25-26, claim 1 of instant application). Cai et al. teach that for antiperspirants and/or deodorants made with a type of gellant emulsion or suspension stick products may be formed. Cai et al.

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teach that if an emulsion is formed, characteristically it is with an internal phase and an external phase. Cai et al. teach that the external phase is defined as the continuous phase where liquids are interconnected wherein the internal phase is defined as the suspended phase where liquids exist in a droplet form stabilized by surfactants and is the gelled oil phase that contains the antiperspirant active. Cai et al. teach that the external gelled oil phase contains at least one silicone fluid, at least one non-silicone organic emollient, and the siloxane-based polyamide gallant (polymer of instant application), as well as optional additives for the antiperspirant product such as surfactants, fragrances, additional emollients etc. Cai et al. teach that the internal phase consists of a liquid solution containing dissolved antiperspirant salt, and typically involves solvents such as water, propylene glycol, dipropylene glycol, tripropylene glycol, ethanol, 1, 2-hexanediol (column 17, lines 22-42, claims 1-3 of instant application). Cai et al. teach the use of silicone oil as a thickening agent (column 25, lines 42-47, claim 4 of instant application). Cai et al. teach the use of silicone fluids as gels that can be volatile or non-volatile and include linear siloxanes known as dimethicones, linear siloxanes containing an aromatic substitution such as phenyl trimethicone and the various cyclic siloxanes having from 4-6 siloxane units in a ring optionally substituted by C1-C6 alkyl or phenyl, particularly cyclic dimethyl siloxanes such as cyclomethicones (column 18, lines 59-end, claim 5 of instant application). Cai et al. teach that the antiperspirant active materials of the composition, when utilized in appropriate amounts, primarily act to reduce malodor by reducing perspiration; the antiperspirant active materials can also have a deodorant function, for example, as an

antimicrobial or bacteriostatic agent (column 23, lines 4-13, claim 8 of instant application). Cai et al. also teach a method of manufacture wherein the antiperspirant/deodorant stick composition is formed by combining two phases (examples 1-7, column 31, lines 31-end to column 32, lines 1-end, claim 10 of instant application).

***Ascertainment of the difference between the prior art and the claims
(MPEP 2141.02)***

The difference between the invention of the instant application and that of Cai et al. is that the instant invention requires the use of a polymer comprising carboxylic, sulphonic or phosphonic acid groups as opposed to amides. For this reason, that the teaching of Rieley et al. is joined. Rieley disclose the use of Brnsted (i.e., Brønsted of instant application) carboxylic acid groups ([0023], claim 11 of instant application) in antiperspirant compositions.

Finding of prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of the two cited references to arrive at a w/o (water/oil) emulsion antiperspirant composition comprising a dissolved antiperspirant salt, an emulsifier and, in a disperse phase separate from the dissolved antiperspirant

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salt, a polymer comprising Bronsted acid groups. One would have been motivated to make this combination in order to receive the expected benefit of having a clear product with improved structural stability and integrity. “It would be prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a resultant composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in prior art.” In re Kerkhoven, 205 USPQ 1069 (C.C.P.A. 1980).

Although the aforementioned references do not teach the use of the specific glyphosate and surfactant concentrations as claimed in the instant application, absent a showing of unexpected results, it would be obvious to one of ordinary skill in the art to vary the concentration amounts depending on the desired result and plant species. Determining optimal concentrations of the herbicidal components is routine experimentation and is readily practiced by one of ordinary skill.

Additionally, it is routine optimization for one of ordinary skill in the art to adjust the amount of ingredients to optimize the desired results. In this case the weight percent ranges of the emulsifier, the level of Bronsted acid groups, and the proportion of the aqueous dispersed phase (s) are routine optimization (claims 6-8 of instant application).

Examiner's Response to Applicant's Remarks

Applicant's arguments, see pages 4-6, filed April 14, 2008, with respect to the rejection(s) of claim(s) 1-10 under 35 USC § 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found art references that positively recite a w/o (water/oil) emulsion antiperspirant composition comprising a dissolved antiperspirant salt, an emulsifier and, in a disperse phase separate from the dissolved antiperspirant salt, a polymer comprising Bronsted acid groups. Since the teaching of Cai et al. is still applied, Applicant's arguments pertaining to these references are addressed below.

Applicant argues that polyvinyl alcohol (PVA) is not a polymer comprising Bronsted acid groups. The Examiner agrees and this has been addressed in the 35 USC § 103 rejection that is set forth in this office action.

Conclusion

None of the claims are allowed.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electron

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Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Mina Haghighatian/
Primary Examiner, Art Unit 1616